

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA  
Criminal No. 14-104(1)(DSD/TNL)

United States of America,

Plaintiff,

v.

**ORDER**

Samuel Salazar-Sosa,

Defendant.

Jeffrey S. Paulsen, United States Attorney's Office, 300 South 4<sup>th</sup> Street, Suite 600, Minneapolis, MN 55415, counsel for plaintiff.

Samuel Salazar-Sosa, #17908-041, Giles W. Dalby CI, 805 North Avenue F, Post, TX, defendant pro se.

This matter is before the court upon the motion by defendant Samuel Salazar-Sosa for a sentence reduction pursuant to 18 U.S.C. § 3582(c)(2). On July 7, 2014, Salazar-Sosa pleaded guilty to conspiracy to distribute a mixture or substance containing a detectable amount of heroin, in violation of 21 U.S.C. §§ 841(b)(1)(B) and 846. In the plea agreement, Salazar-Sosa admitted that he was an average participant in the conspiracy. On January 5, 2015, the court sentenced Salazar-Sosa to 57 months' imprisonment, followed by three years of supervised release.

Salazar-Sosa now moves for a reduction in his total sentence pursuant to Amendment 794 of the United States Sentencing Guidelines, which became effective on November 1, 2015. Amendment 794 addresses the standards governing mitigating-role reductions under Guidelines § 3B1.2. Salazar-Sosa argues that he qualifies as a minor, rather than average participant under the amendment. The

government opposes the motion on the grounds that the amendment does not apply retroactively and because Salazar-Sosa stipulated that he was an average participant. The court agrees with the government.

The court may modify a term of imprisonment when the Sentencing Commission subsequently lowers a sentencing range. 18 U.S.C. § 3582(c). A post-sentencing guidelines amendment applies retroactively, however, only if the Sentencing Commission expressly declares it to be retroactive. See U.S.S.G. § 1B1.10(d). Because the Sentencing Commission did not include Amendment 794 on the list of retroactively applicable amendments, see id., it cannot be applied to Salazar-Sosa. See United States v. Lewis, No. 16-2939, 2016 WL 6601644, at \*3 (D. Minn. Nov. 7, 2016) (rejecting application of Amendment 794 because it is not retroactive); United States v. Shelton, No. 10-295(8), 2016 WL 6584908, at \*1 (D. Minn. Nov. 4, 2016) (same). Further, Salazar-Sosa conceded his average role in the offense, which undermines the factual basis for his motion.

Accordingly, based on the above, **IT IS HEREBY ORDERED** that the motion for sentence reduction pursuant to 18 U.S.C. § 3582(c) [ECF No. 96] is denied.

Dated: January 11, 2017

s/David S. Doty  
David S. Doty, Judge  
United States District Court